

Senate File 2309 - Introduced

SENATE FILE 2309
BY COMMITTEE ON ECONOMIC
GROWTH/REBUILD IOWA

(SUCCESSOR TO SSB 3178)

A BILL FOR

1 An Act relating to retailers maintaining a place of business
2 in this state for purposes of the collection of sales and
3 use taxes, agreements relating to the collection of sales
4 and use taxes in the state, and sales of tangible personal
5 property and services to the state.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, subsection 48, Code Supplement
2 2011, is amended to read as follows:

3 48. a. "Retailer maintaining a place of business in this
4 state" or any like term includes any retailer having or
5 maintaining within this state, directly or by a subsidiary,
6 an office, distribution house, sales house, warehouse, or
7 other place of business, or any representative operating
8 within this state under the authority of the retailer or its
9 subsidiary, irrespective of whether that place of business or
10 representative is located here permanently or temporarily, or
11 whether the retailer or subsidiary is admitted to do business
12 within this state pursuant to chapter 490.

13 b. (1) A retailer shall be presumed to be maintaining a
14 place of business in this state, as defined in paragraph "a", if
15 any person that has substantial nexus in this state, other than
16 a person acting in its capacity as a common carrier, does any
17 of the following:

18 (a) Sells a similar line of products as the retailer and
19 does so under the same or similar business name.

20 (b) Maintains an office, distribution facility, warehouse,
21 storage place, or similar place of business in this state to
22 facilitate the delivery of property or services sold by the
23 retailer to the retailer's customers.

24 (c) Uses trademarks, service marks, or trade names in this
25 state that are the same or substantially similar to those used
26 by the retailer.

27 (d) Delivers, installs, assembles, or performs maintenance
28 services for the retailer's customers.

29 (e) Facilitates the retailer's delivery of property to
30 customers in this state by allowing the retailer's customers to
31 take delivery of property sold by the retailer at an office,
32 distribution facility, warehouse, storage place, or similar
33 place of business maintained by the person in this state.

34 (f) Conducts any other activities in this state that
35 are significantly associated with the retailer's ability

1 to establish and maintain a market in this state for the
2 retailer's sales.

3 (2) The presumption established in this paragraph may be
4 rebutted by a showing of proof that the person's activities in
5 this state are not significantly associated with the retailer's
6 ability to establish or maintain a market in this state for the
7 retailer's sales.

8 Sec. 2. NEW SECTION. 423.13A Administration —
9 effectiveness of agreements with retailers.

10 1. Notwithstanding any provision of this chapter to the
11 contrary, any ruling, agreement, or contract, whether written
12 or oral, express or implied, entered into after the effective
13 date of this Act between a retailer and a state agency which
14 provides that a retailer is not required to collect sales and
15 use tax in this state despite the presence in this state of
16 a warehouse, distribution center, or fulfillment center that
17 is owned and operated by the retailer or an affiliate of the
18 retailer shall be null and void unless such ruling, agreement,
19 or contract is approved by a majority vote of both houses of
20 the general assembly.

21 2. For purposes of this section, "*state agency*" means
22 the executive branch, including any executive department,
23 commission, board, institution, division, bureau, office,
24 agency, or other entity of state government. "*State agency*"
25 does not mean the general assembly, or the judicial branch as
26 provided in section 602.1102.

27 Sec. 3. Section 423.36, Code 2011, is amended by adding the
28 following new subsection:

29 NEW SUBSECTION. 1A. a. Notwithstanding subsection 1,
30 if any person will make taxable sales of tangible personal
31 property or furnish services to any state agency, that person
32 shall, prior to the sale, apply for and receive a permit
33 to collect sales or use tax pursuant to this section. A
34 state agency shall not purchase tangible personal property
35 or services from any person unless that person has a valid,

1 unexpired permit issued pursuant to this section and is in
2 compliance with all other requirements in this chapter imposed
3 upon retailers, including but not limited to the requirement to
4 collect and remit sales and use tax and file sales tax returns.

5 *b.* For purposes of this subsection, "*state agency*" means
6 any executive, judicial, or legislative department, commission,
7 board, institution, division, bureau, office, agency, or other
8 entity of state government.

9

EXPLANATION

10 This bill relates to the collection of sales and use taxes
11 by retailers maintaining a place of business in this state,
12 agreements relating to the collection of sales and use taxes,
13 and sales of tangible personal property and services to state
14 agencies.

15 A retailer located in this state, or maintaining a place of
16 business in this state, must collect and remit sales and use
17 taxes to the department of revenue. Currently, as defined in
18 Code section 423.1, the term "retailer maintaining a place of
19 business in this state" includes certain places of business,
20 and representatives operating under the authority of the
21 retailer.

22 The bill provides that a retailer will be presumed to be
23 maintaining a place of business in this state if any person
24 that has substantial nexus in this state, other than a common
25 carrier, engages in any of six activities specified in the
26 bill. The presumption may be rebutted by a showing of proof
27 that the person's activities are not significantly associated
28 with the retailer's ability to establish or maintain a market
29 in this state for the retailer's sales.

30 The bill provides that any ruling, agreement, or contract
31 entered into after the effective date of the bill between a
32 retailer and a state agency which provides that a retailer is
33 not required to collect sales and use tax in this state despite
34 the presence in this state of a warehouse, distribution center,
35 or fulfillment center owned and operated by the retailer or

1 an affiliate shall be null and void unless it is specifically
2 approved by a majority vote of both houses of the general
3 assembly. For purposes of this provision of the bill, "state
4 agency" does not include the general assembly or the judicial
5 branch.

6 The bill provides that no person shall make taxable sales or
7 furnish taxable services to a state agency unless that person
8 obtains a sales tax permit. Also, the state is prohibited
9 from purchasing taxable property or services from any person
10 unless that person has a valid, unexpired sales tax permit and
11 is in compliance with all other sales tax laws imposed upon
12 retailers. For purposes of this provision of the bill, "state
13 agency" includes the executive branch, the general assembly,
14 and the judicial branch.